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3951 U.S. PTO

Patent Application

Docket No.: 27771.00210

#4  
T-W.  
3-24-98

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:  
Adam LEE, Kuang WU,  
Larry BURTON, and Leon FAN  
  
Serial No.: 08/811,434  
  
Filed: 03/03/97  
  
For: DOWNCOMER FOR CHEMICAL  
PROCESS TOWER

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S Art Unit: Not Yet Assigned.  
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S Examiner: Not Yet Assigned  
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To the Honorable Assistant  
Commissioner of Patents  
Washington, D.C. 20231

I hereby certify that this correspondence is being  
deposited with the United States Postal Service as  
first class mail in an envelope addressed to:  
Commissioner of Patents and Trademarks,  
Washington, D.C. 20231

December 5, 1997  
Signature JEFFERY E. BINKLEY

Sir:

AFFIDAVIT OF MICHAEL BINKLEY

1. My name is Michael Binkley and I am over the age of  
twenty-one (21) and competent to make this declaration.

2. I reside at 2006 South Uhl Road, Glenn Heights, TX  
75154.

3. From 1969 to June of 1997, I worked for Glitsch, Inc.,  
at its facilities at Dallas, Texas.

4. In June of 1997, Glitsch, Inc. sold to Koch Industries, Inc. certain assets, including its facilities in Dallas, Texas.

5. Since June of 1997, I have worked for Koch Industries, Inc.

6. During the time that I worked for Glitsch, Inc., I became familiar with Adam Lee, Kuang Wu, and Larry Burton sufficiently that I can recognize their voice over the telephone.

7. During my employment with Glitsch, Inc., it was understood that a condition of employment was that inventions developed by an employee within the scope of the employee's duties were the property of Glitsch, Inc. In compliance with this condition of employment, Adam Lee, Kuang Wu, and Larry Burton did assign certain inventions to Glitsch, Inc. that they had developed in the course of their employment with Glitsch, Inc.

8. During the course of employment with Glitsch, Inc., Adam Lee, Kuang Wu, Larry Burton, and Leon Fan developed, within the scope of their duties, an invention known as "DOWNCOMER FOR CHEMICAL PROCESS TOWER", which was filed as the above referenced patent application.

9. As part of the sale of assets by Glitsch, Inc. to Koch Industries, Inc., the above-referenced application was assigned by Glitsch, Inc. on June 26, 1997 to 4900 Singleton, L.P., and to Koch Industries, Inc. on June 26, 1997 by 4900 Singleton L.P. A copy of the recorded assignments are attached as Exhibit A.

10. Adam Lee, Kuang Wu, and Larry Burton decided not to accept employment from Koch Industries, Inc. when Glitsch, Inc. sold the facilities at Dallas, Texas to Koch Industries, Inc.

11. On September 5, 1997, Jeffery Bacon sent a declaration for the above referenced application to Adam Lee, Kuang Wu, and Larry Burton by registered mail, return receipt requested. A copy of these letters and the return receipts are attached as Exhibit B.

12. After various attempts to have Adam Lee, Kuang Wu, and Larry Burton execute a declaration, Jeffery Bacon sent the copy of the originally filed application, a preliminary amendment, and the latest declaration for the above-referenced application on November 21, 1997 to Larry Burton via courier for review and execution by Larry Burton, Adam Lee, and Kuang Wu. A copy of this letter is attached as Exhibit C.

13. On December 3, 1997, I had a telephone conversation with Larry Burton in which we discussed the conditions under which he, Adam Lee, and Kuang Wu would sign the latest declaration for the above-referenced application. I asked Larry Burton if he had received and reviewed the application, preliminary amendment, and latest declaration sent via courier to him on November 21, 1997 by Jeffery Bacon, and he said that he had. Larry Burton stated that the only condition that he, Adam Lee, and Kuang Wu required for them to sign the latest declaration was certain compensation from Koch Industries, Inc. for their time reviewing the application, preliminary amendment, and declaration in this matter. Koch Industries, Inc. had previously decided that it would not pay the compensation specified by Larry Burton. In this telephone conversation I informed Larry Burton that Koch Industries, Inc. would not pay the requested compensation and asked Mr. Burton if they would sign the latest declaration without the compensation. Larry Burton stated that they would not sign the declaration without the compensation. I asked Larry Burton if the reason that they would not sign the declaration was because they contested ownership of the application by Koch Industries, Inc., or if they

would not sign because they were not receiving the requested compensation for their time reviewing the documents in this matter. Larry Burton stated that they did not contest ownership by Koch Industries, Inc. and they were not going to sign because they were not to receive the requested compensation for their time reviewing the documents in this matter. I then asked Larry Burton if he conferred with and spoke for Adam Lee and Kuang Wu, and he said that he did.

14. On December 3, 1997, after my telephone discussion with Larry Burton, I had a telephone conversation with Adam Lee in which we discussed the conditions under which Larry Burton, Kuang Wu, and he would sign the declaration for the above-referenced application. Adam Lee confirmed that they would sign if Koch Industries, Inc. paid them the requested compensation for their time reviewing the application, preliminary amendment, and declaration in this matter. I informed Mr. Lee in this telephone conversation that Koch Industries, Inc. would not pay the requested compensation and asked Mr. Lee if they would sign the latest declaration without the compensation. Adam Lee stated that they would not sign the declaration without the compensation. I asked Adam Lee if they would not sign the declaration because they contested ownership of the application by Koch Industries, Inc., or if they would not sign because they were not receiving the requested compensation for their time reviewing the documents in this matter. Adam Lee stated that they did not contest ownership by Koch Industries, Inc. and they were not going to sign because they were not to receive the requested compensation for their time reviewing the documents in this matter. I then asked Adam Lee if he conferred with and spoke for Kuang Wu, and he said that he did.

15. On December 4, 1997, I had a telephone conversation with Adam Lee regarding the above-referenced application. In this telephone conversation, Adam Lee stated to me that Kuang Wu,

Larry Burton, and he had discussed the matter of the above-referenced application on the night of December 3, 1997, after my telephone conversations with Larry Burton and Mr. Lee on that day. Adam Lee affirmed that he, Kuang Wu, and Larry Burton would not sign the declaration unless they were paid the requested compensation.

16. Koch Industries, Inc. will not agree to the conditions required by Adam Lee, Kuang Wu, and Larry Burton to signing the declaration for the above-referenced application, and considers the required conditions tantamount to a refusal to sign the declarations.

17. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Michael J. Binkley  
Michael Binkley

Date: Dec 4, 1997